

S03E05: Land is Kin: Indigenous Rights and Sovereignty with Dana Lloyd

Jordan Brady Loewen-Colon ([00:07](#)):

Hello and welcome to the Mapping the Doctrine of Discovery podcast. The producers of this podcast would like to acknowledge, with respect, the Onondaga Nation, Fire Keepers of the Haudenosaunee, the indigenous peoples on whose ancestral lands Syracuse University now stands. And now, introducing your hosts, Phil Arnold and Sandy Bigtree.

Philip P. Arnold ([00:31](#)):

Welcome back everyone to Mapping the Doctrine of Discovery. My name is Phil Arnold. I'm faculty in the religion department at Syracuse University, and founding director of the Skä·noñh Great Law of Peace Center.

Sandy Bigtree ([00:44](#)):

Yeah, thanks for tuning back in. I'm Sandy Bigtree, a citizen of the Mohawk Nation at Akwesasne.

Philip P. Arnold ([00:53](#)):

And the podcast is sponsored by a grant by the Henry Luce Foundation. Today we have with us an old friend, again, a wonderful colleague, professor Dana Lloyd. Dr. Lloyd is assistant professor of Global Interdisciplinary Studies, an affiliated faculty for the Center for Peace and Justice Education. Dr. Lloyd got her PhD at Syracuse University Department of Religion, and her MA and law degrees from Tel Aviv University. Her latest book, which will be the subject of our conversation tonight, is Land is Kin: Sovereignty, Religious Freedom, and Indigenous Sacred Sites from the University Press of Kansas.

Sandy Bigtree ([01:47](#)):

Now you may be hearing some rumbling in the background and it's our thunder beings, so we're going to move forward with that. They're all welcome to this podcast.

Philip P. Arnold ([01:56](#)):

Yes, good luck. So Dana, so lovely to have you with us. Can you tell us about Land is Kin?

Dana Lloyd ([02:07](#)):

Yes. Nice to be here. Thank you for having me. Very excited. The book is coming out, I guess in two or three days officially, it's been out, but the official publication date is November 16th. So it's very exciting. It really comes from my training in legal studies and religious studies. I guess maybe I can take a step back and say that I grew up in Tel Aviv on Palestinian land. I am now talking to you from Philadelphia in the Nappé territory. But I guess coming to the US to graduate school and looking at the field of law and religion, especially in cases that are related to land, but with a perspective from Israel Palestine, there were a few things that were striking to me, some related to similarities between the two different settler colonial contexts, and some related to differences I guess both about religion and about how the settler state works and how the legal system supports settler colonialism.

([03:27](#)):

If in the US we all assume the separation of church and state, and maybe some of us would say in reality it's a very religious nation. The separation is only formal. But when you look at the actual people or the actual laws, religion and specifically Protestantism is very central. The state of Israel doesn't pretend to be secular. There's no separation of church and state and idea that land is sacred and that the

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sacredness justifies a lot of violence, calls for violence is something that anyone in the street would tell you. You don't need any degree to think that or to look at that.

(04:14):

So I think these two things made it very interesting for someone like me with a legal background with a degree in religion, looking at US cases, legal cases about religion and about land and saying, wait a minute, we need to talk about what we're seeing here. And specifically I got interested in cases that are related to indigenous land I guess because I'm coming from a settler colonial context, and of course we're seeing right now the war in Gaza that is heartbreaking and enraging. But I think that looking at the American context allowed me to come to terms with the context where I grew up without having to touch it directly, if that makes sense.

Sandy Bigtree (05:11):

Wow.

Philip P. Arnold (05:11):

Let's unpack that a little bit because very interesting.

Sandy Bigtree (05:14):

Yeah. Powerful.

Philip P. Arnold (05:16):

I'm wondering, so the Israeli-Palestinian context where you have land as sacred, right? I suppose land is kin then in some way, the blood of the ancestors is there, resides in the landscape. So I'm wondering about the title, right? Land is Kin or Land is Kin, where in the US context, another settler colonial situation, the sacrality of land really resides with indigenous peoples and not with settler colonial peoples such as myself. I'm wondering about how one reveals the other, where land has a different kind of resonance, in many ways the fact that land is sacred in Israel-Palestine makes it more of a problem in many ways, right? The violence more acute, the feelings more deeply felt. Where in the US we have a very kind of inversion of that, right? I'm wondering if you could unpack that a little bit.

Dana Lloyd (06:36):

Yeah. So I mean the first thing that I'll say is that if the land is sacred, the land is sacred. It doesn't matter if you or me believe in it or know it or feel it, right? It's sacred. So some of us, settler peoples in the US context, or maybe secular people in Israel, Palestine can deny it, but the sacredness is not affected by how we think about it. So that's just one thing to put out there. The thing that the book wants to do is to say land means many things in different instances and to different people. And the way that American liberal politics and law wants us to think about these different ideas or conceptions of land is as competing against each other and mutually exclusive. But actually I want to see how all these roles that land is playing in our lives can live together because they actually do live together.

(07:44):

So in order to demonstrate it, I looked at one US Supreme Court case that's a landmark case on religious freedom and land rights from the 1980s in Northern California. The case is called *Lyng v. Northwest Indian Cemetery Protective Association*. At the center is an area sacred to the Yurok, Karuk and Tolowa

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peoples that is now managed by the United States Forest Service as part of the Six Rivers National Forest.

[\(08:30\)](#):

And what happens in the 80s, but decades before that is that the Forest Service really wants to develop the area. They want to cut down the trees, they want to build their logging road that would help them access the trees and the nations say this area is sacred to us. If you do all this, we cannot use the area anymore for our purposes for medicine making, for gathering, for ceremony. And because the US grants us the right to free exercise of religion, you actually have to respect our belief in the sacredness of this land and leave it alone. There's a few decades of administrative struggles there. It doesn't work. They end up going to court and they win in the first two lower courts in the district court and in the court of appeals and the government takes them to the Supreme Court.

Philip P. Arnold [\(09:45\)](#):

So much of your book is about the Lyng decision, which was also the subject of your dissertation. And I would like our listeners to understand the importance of the Lyng decision and how religion plays a key role.

Dana Lloyd [\(10:03\)](#):

Great, thank you. Yeah. So Lyng v. Northwest Indian Cemetery Protective Association is a case that the US Supreme Court decided in 1988. It's the first time that the Supreme Court decides a case that's about Native American sacred sites, which makes it significant and a really important precedent for later cases that come about, including the famous Oregon v. Smith case and the San Francisco Peaks cases. But what happens in Lyng is that at the center, there is an area in Northern California sacred to the Yurok, Karuk, and Tolowa nations managed by the US government as part of the Six Rivers National Forest and referred to by the indigenous nations as the high country because there's a series of rocks there and peaks, but also because of the high spiritual powers in the area.

[\(11:28\)](#):

So what happens is that somewhere in the 1950s, the Forest Service starts being really excited about all the trees in the area and wanting to use these trees for the lumber industry, starts making plans to cut off a lot of the trees to build a road that would support this industry. And the Three Nations struggle against it first in all sorts of administrative means, and eventually they go to court and what they say is this place is sacred. It means that we use it for making medicine, for gathering, for ceremony. And part of the sacredness has to do with the fact that the area is inaccessible. It's very quiet. We can meditate there. Cars cannot go there. Our relatives reside within the trees. We can communicate with them. It's really essential to our way of life. And because the US Constitution grants us the right to free exercise of religion, you need to respect that and you can't touch it, because destroy our religion.

[\(12:57\)](#):

And I think that they use the language of religion strategically, because they know that this is what the law protects for them. Calling it a way of life would be something that the court can't hear, it doesn't know what it means. What happens is that they win in the district court and in the court of appeals, and then the government takes them all the way to the Supreme Court. And the Supreme Court says something really interesting because they say, Justice O'Connor writes the decision, the majority opinion, and she says we recognize that this is a sincerely held belief, meaning that we believe you that the area is sacred to you. And we also believe that what the government is planning to do will destroy or

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has the risk of destroying this religion, which on the face of it means that they should win the case. This is how religious freedom cases or free exercise cases work.

(13:58):

If you proved all that and the government can't prove that it has a really, really compelling interest in hurting your religion, then you win. And yet Justice O'Connor says something new that we'd never heard in such cases before. And she says, "Because this is government property, I can't tell them what to do with their land. They can decide what to do with the land." And this is a really interesting way to set against each other this idea of land is sacred and land is property. This thing in O'Connor's decision can't live together.

(14:42):

Then Justice Brennan writes the dissent in the case where he says, "This is a religion being practiced for thousands of years, and we should let them win, because Native Americans see all land is sacred and we have to respect them." And so in the book, I acknowledge that Brennan's approach is much better than O'Connor's approach, recognizing that these peoples have existed in this land, they have not been removed and they have been there for thousands of years, is a good thing. And wanting to keep the area intact is a good thing. But also there's a kind of way of essentializing indigeneity that makes me feel very uncomfortable with how the idea of land is sacred is used there. So there's something that we can see when we look at this case, which is when settler law encounters the indigenous subject, whatever it does would be the law cannot be liberated from its role as the tool of the colonizer.

Philip P. Arnold (16:07):

Oh wow. That's interesting.

Dana Lloyd (16:12):

Yeah, I mean there's a lot of things that are really interesting in this case, for example, what's really the center of the conflict there is the final six miles of the road that the Forest Service wants to build. So they built most of it. It's called the G-O Road because it's connecting two towns in northern California, Gasquet and Orleans, and the final six miles are right in the middle of this high country. And so that's what the Yurok, Karuk and Tolowa peoples are opposed to.

(17:00):

And the thing about the Supreme Court is that it gets requests to decide cases every year, 700 requests every year or so, and it takes about 10% of them. So it grants sanctuary to something like 70 cases. So the idea is the Supreme Court would waste its energy and time and money on hearing a case that's basically about six miles from their perspective, I would say in the middle of nowhere. Obviously it's not the middle of nowhere to these nations, but I would think that for the Supreme Court justices, it's very insignificant. If you asked me when I first read this case, I would've said I can't understand why they would decide this case.

Sandy Bigtree (17:56):

Well, the Supreme Court is always about setting the precedent for future cases. And when the colonizer's religion is one that is faith-based, it's going to take a case that will define that in all its entirety, that it's not about religion being embedded in the land. And we live in the lands of the Haudenosaunee at the center where the Onondaga live. And time, and again, they have been critical of our use of the term religion because land identifies who we are. It's about identity, and it's about our relationship and our kinship to the land. So when you try to interpret all of that on the basis of the

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colonizer's religion, of course we're going to lose that case, and the Supreme Court will be eager to take on that case to set the precedent of domination over the land.

Dana Lloyd ([18:56](#)):

Right. Yeah, this is great. I did not know all of that when I came to it. I naively thought that this is a case about religious freedom. There's dozens and dozens, hundreds of law review articles about this case, all analyzing how the court talks about religious freedom, and no one says what coercion means and what it means to prove a sincerely held belief and things like that. And I really had to shift gears and think about this case as a case about sovereignty in order to understand what's going on. But even then, I think at first I thought of sovereignty as something like who has the right or the authority or the power to decide the fate of the place? Is it the US, or is it the Europe nation or Karuk or Tolowa nations having gone through the process of talking to these people who were litigating the case, 30 years later, but still they're still doing good work. I realized that sovereignty for them is something else. You're talking about kinship, you're talking about relationship.

([20:22](#)):

It's not about us deciding what happens to the land. The land is sovereign, right? It's the land who decides our fate. And working with that conception, I think led me eventually to see, the work that for example, the Yurok Nation has been doing more recently around healing and saving the Klamath River from the dams that have been harming it is really based on an idea that the river is part of the community, part of the family.

Sandy Bigtree ([20:59](#)):

I'm sorry, teacher, our guide.

Dana Lloyd ([21:03](#)):

Yeah. I teach a course at Villanova called Native America and the Question of Genocide, and one thing that is really important to me to get the students to see, or a way that I think that this story helps to complicate our idea of what genocide means, is that if the river is part of the community just as much as the people are part of the community, harming the river in this way is genocide. It's not different from killing the people or killing the animals.

Philip P. Arnold ([21:47](#)):

One way to think about it too, is if we consider the commodification of human beings as dehumanization, slavery essentially, right? Commodification of human beings. So if the commodification of land or the commodification of other beings of the natural world, what Robin Kimmer calls other than human beings, then how is that different in a way from enslavement? So the logic of indigenous people seems to be consistent in many ways. The other thing that struck me about your story about Lyng is that it's on the heels of the American Indian Religious Freedom Act, 1978. And this becomes an opportunity to test that, by the Supreme Court to essentially take the teeth out of religion, out of Native American religion in scare quotes. And so this becomes part of a series of decisions that really demonstrate that Native American religion really doesn't have any standing in a way in the law. And what you said before, that the law cannot be liberated from being a tool of the colonizer. That seems to be very profound.

Dana Lloyd ([23:24](#)):

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Yeah, thank you. So I'll say that part of my critique of this descent in Lyng that actually see religion as a liberating tool or wants to write critiques, the majority opinion for not saying that religion is actually important, is that when he does that, without talking about the civilization regulations and the ways in which religion also has been a tool of colonization and genocide, then religion becomes this fluffy thing that we say these people are religious, all they want is to live in harmony with the land that is sacred to them. Even the notion that the land is sacred to them and therefore they don't believe in ownership of land is something that even the anthropologists disagree with. And I'm not excited about listening to the anthropologists, especially people like Alfred Kroeber, the Berkeley anthropologist who worked with the Yurok people most of his career and did offer things to them.

[\(24:45\)](#):

But even the anthropologists say, yeah, there is a system of private property at play with these nations. So romanticizing and essentializing indigeneity is something that is like this kind of relationship with the land is sacred, totally depoliticized, not sophisticated enough to own property. That's the story of the doctrine of discovery, at least the way that it enters US law. These people are savages. They don't know how to work the land. They can't tame it.

Philip P. Arnold [\(25:25\)](#):

Can't make it useful, somehow.

Dana Lloyd [\(25:27\)](#):

Can't make it useful. And the story about the land is sacred to them, they don't do anything to it, is part of it. So Justice Brennan does it in order to call for a win for the indigenous plaintiffs in this case. But the way that he does it, just like Sandy is saying, what the Supreme Court cares about is future cases and setting precedent, the dissent of Justice Brennan becomes part of this legal story that just reinforces stereotypes.

Sandy Bigtree [\(26:01\)](#):

How can it be otherwise if the colonizer views the sacrality of the land as a belief system? Because their religion is encoded in belief of something created outside of the body. I mean, all our ceremonies are not of prayer among the Haudenosaunee, they're acknowledgements of the land and of all these entities of the fish, of the stars, of the thunder beans, of the trees, of those streams, I mean, they're all entities. They all have their own sovereignty. And it's this network of interaction that identifies who we are. We're not in charge of any of them. So when you're trying to dominate these new lands and these people and using the tool of your religion, which is one based in belief that's extraneous to this material world, how can you see the sacred as being anything but some made up mental belief system?

Dana Lloyd [\(27:11\)](#):

Yeah, no, I agree. So I'll tell you that I used to think, or I still think that there maybe was some potential there that was not realized with the idea of wilderness. So the high country ended up being protected through the California Wilderness Act. So what happens is the Supreme Court says the government can do whatever it wants, but at the same time, Congress says, "No, you can't touch this." And wilderness on one hand also is part of the bigger story of this possession and genocide, because as we were talking about native peoples we're not able to domesticate the land and therefore we can take it from them. But these very macho Protestant American men, if there's anything in nature that they see as symbolizing religion or as sacred, it's wilderness, right? This idea of wilderness is very significant in

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American political thought and how religion enters American politics. And so part of me thinks if there was any moment in which these two communities can talk to each other, it's around that.

Philip P. Arnold ([28:46](#)):

Yeah, the environmentalists and indigenous peoples you mean?

Dana Lloyd ([28:50](#)):

Yeah. But I mean there's a long history of also US courts and Supreme Court justices like William Douglas for example, who were enthusiastic about the environment and about wilderness.

Sandy Bigtree ([29:08](#)):

Well, it's the control thereof. I mean, the Bible talks about having dominion, human beings having dominion over the earth being the stewards of the land. Indigenous people do not view it that way. It's quite the opposite. The land is the steward of us that provide a very existence. Our creation story is completely different. Sky Woman is falling from the cosmos, and it's the beings of the earth that fly up and cradle her and set her gently on turtle's back. We would not exist had the earth not reached out to humanity to allow them to live. It's a gift of life.

([29:50](#)):

We talk about the warring of the Haudenosaunee, and that bringing them back into the road of peace was first to address Jigonhsasee who took women back into the forest. They followed protocol. And then certain animal beings would present themselves to the women that would be their new identifiable clan that would have clarity and attaching them in identifying them back into the earth. It's always about the earth, the beings of the earth coming to us to help identify who we are. It's completely the opposite. How is the colonizer supposed to even see this?

Dana Lloyd ([30:33](#)):

Right, yeah. I mean, I think what also is very clear in your story here is that it's also very, very gendered.

Sandy Bigtree ([30:45](#)):

To a point. It's not the matriarch is in control. The woman gives birth to all beings, male and female. Those are other creation stories, what happens after that point? But she's arriving to the earth, on a sea of water, all the beings protect her so she can live, and she's a woman pregnant. It does start with a woman's body. There would be no life if women did not reproduce human beings.

([31:14](#)):

So it's not about the authority of women having this matriarchal control. It's not about hierarchy at all. This is what begins life, and then it's shared and there's balance with the natural world and with all genders from the continuum, all of it very different. It's hard for the colonizer to understand that when they were coming into a territory and creating the dichotomy of evil against good or good against evil, excuse me, and male and female genders. I mean, it's just eliminated so much in between that is really life affirming. All that is in between both.

Philip P. Arnold ([32:03](#)):

Well, and also, I mean, if we go back to the very early colonial periods, the whole thing about settler colonialism is extractive economy. What I think Sandy's talking about is a kind of gift exchange, gift

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economy, the gift of life that human beings need to account for in various ways. And in the case of settler colonialism, it's all about the transatlantic global trade right from the beginning, and an extractive economy. I think once you mentioned that these lands are deemed as empty or terra nullius, which goes back to these ideas of the doctrine of discovery.

(32:52):

So I mean, one of the questions that I had listening to you talk about Lyng and some of these other, those 20th century decisions is how they reflect back to Johnson. I mean Johnson v. Macintosh, when the doctrine of discovery is brought into US law, right? In a way, and I don't know if you deal with this in the book, I'm sorry, but it is a fascinating kind of element for me as a non-lawyer looking at this. It's how these religious justifications for colonialism are brought into property law through Johnson v. McIntosh. And that's after all what our conference is about, 200 years of this. And I'm wondering how that reflects in some ways on these 20th century Supreme Court decisions. I mean, I don't mean to be unfair. I don't know if this is too much to ask, but it does seem that cases like Lyng and others that you discuss in the book do resonate with Johnson and these early decisions on indigenous peoples.

Jordan Brady Loewen-Colon (34:13):

Do you need help catching up on today's topic, or do you want to learn more about the resources mentioned? If so, please check our website at podcast.doctrineofdiscovery.org for more information. And if you like this episode, review it on Apple, Spotify, or wherever you listen to podcasts. And now, back to the conversation.

Dana Lloyd (34:32):

Yeah. So part of my argument in the book is that the Lyng case is argued, decided and studied as a case about religious freedom, which means that it relies on a certain set of precedent cases that are religious freedom cases. There's very few indigenous sacred site cases. They're not Supreme Court cases, but the lower courts did decide some cases related to sacred sites. But most of the corpus is about free exercise unrelated to land. Once Justice O'Connor makes this remark about the land being government property, I say, well, this changes the picture. And if it's a case about property that it needs to be decided while relying on a different body of precedent, including Johnson v. Macintosh.

(35:40):

Don't conceal what you're doing. You're not concealing what you're doing. So bring it on. Let's look at it. Johnson v. Macintosh is the first of what we call the martial trilogy, the other Cherokee cases. The other two cases that are about the state of Georgia and the Cherokee Nation complete the trilogy in the sense that what Marshall does there is to domesticate indigenous nations. I guess, in a few different senses one is to make their sovereignty partial or relative, not absolute. You are a part of the United States, you're not foreign nations. The other way that I think about this domestication is the idea of domesticating the savage, which is a big part of the rhetoric there in this trilogy.

(36:41):

And the other thing that is outside of the court decisions, martial decisions, but is taking place at the same time, and especially in the assimilation era, is how the attacks on indigenous sovereignty are happening within the indigenous home, or the attacks are on the indigenous home and family. We talked about kinship. So the domestic sphere becomes political, becomes a big part of the story here, of the struggle. And when we have witnesses in the case talking about the high country as their home, and then we have the court making a decision about the cases, if the competition is between sacredness and

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property, I say we need to bring all these prior cases from 200 years ago into the conversation and see what these concepts really mean in the history of colonization.

Sandy Bigtree ([37:44](#)):

And going back right to the founding of this country, in the very early stages, the founding fathers were consulting with the Haudenosaunee on how to establish this new form of indigenous democracy. And our [inaudible 00:38:00], the men of the good mind, our clan representatives were consulting with the founding fathers, telling them about the words of the great peacemaker and how we need to be in proper relationship with the natural world to understand peace. And that symbol of the bound arrows with the bound sinew of the deer is part of the presidential seal, it's on our dollar bills. That was the very first iconography used in the founding of this country. And shortly thereafter, what was integrated into the iconography of this country was the fasces of the Roman Empire with the rods bound around the hatchet, and it represents authoritarian government of the Roman Empire. Later, that symbol was used by Mussolini to represent a fascist government.

([38:55](#)):

And I have to say, those symbols stand on either side of the Speaker of the House of Representatives. When you look at them speaking in that hall. And it's also supporting Lincoln's hands on the Lincoln Monument. It's those fasces that came after our influence, which was at the very beginning of this new democracy that was indigenously influenced. So we have to really address what are we, are we a democracy or are we a fascist kind of authoritarian government? Because both those symbols represent both of those conflicting governments and are before us today. We need to define what are we in this country. What are we going to follow? And I think you're seeing this in law in these cases. Is it about domination of this world or is it about living in balance? We have to address that. It's at the core of how this country was founded.

Dana Lloyd ([40:07](#)):

Yeah, and I think we continue to see it in cases from this past term. We had very recently, the *Haaland v. Brackeen* case was decided at the same time as the Navajo Water case was decided. You also look at these cases and you ask yourself, and we have a very conservative Supreme Court, but also a Supreme Court that is capable to recognize indigenous sovereignty in more sophisticated ways than previous courts. So I don't know what it means for our democracy, and that it's the same justices who can completely erase women's reproductive rights.

Sandy Bigtree ([40:50](#)):

That's right.

Dana Lloyd ([40:51](#)):

And at the same time, say indigenous children should be fostered and adopted by indigenous communities. How do you reconcile it? But also says Navajo sovereignty doesn't include any right to water. How do you make sense of all this? I don't know. I don't have a good answer.

Sandy Bigtree ([41:14](#)):

But you're in it, and it's your job.

Philip P. Arnold ([41:16](#)):

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Yeah.

Dana Lloyd ([41:19](#)):

Yeah. My job is to ask questions, no?

Sandy Bigtree ([41:21](#)):

Most difficult. Yeah.

Philip P. Arnold ([41:23](#)):

Well, I think your very interesting work reflects, and at the same time it reflects what is law's function when it comes to indigenous peoples. And then on the other hand, it also reflects back on the meanings and the uses of religion. How is religion deployed or not in defense of indigenous peoples? It's always been a slippery slope right from the beginning, religion. So I'd be interested in seeing or hearing more about how you teach the doctrine of discovery.

Sandy Bigtree ([42:06](#)):

And I would like to say it extends, I think, beyond indigenous peoples, and all people, I mean, if we're to live as a human being on this planet, there is so much to learn from indigenous wisdom and indigenous values. So it impacts all of us as human beings living on this earth.

Dana Lloyd ([42:28](#)):

So I mean, I guess I said, I don't have answers, but I guess the book ends with Yurok law. The book takes us away and out of settler law.

Philip P. Arnold ([42:38](#)):

Oh, wow.

Dana Lloyd ([42:38](#)):

There's no answers there, right?

Sandy Bigtree ([42:39](#)):

Right.

Dana Lloyd ([42:40](#)):

And once this happens, religion also disappears. There is again, a language about creation stories, the creator ceremony terms that religious studies scholars love and work with. But I don't think they mean the same thing that they mean to the scholar of religion in that context. So yeah, I really appreciate and like the language of values instead of the language of religion.

Sandy Bigtree ([43:12](#)):

But these documents, these ancient documents, the doctrines of discovery, it really has unpacked a lot for Native and non-native people alike to rethink all of this and see it from a different perspective.

Philip P. Arnold ([43:26](#)):

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It's horrible. It's a terrible history, but it's also unifying and in some ways liberating to think about this. And that's why I would like to ask, how is it that you teach the doctrine of discovery, or do you, and how do your students engage the topic?

Dana Lloyd ([43:49](#)):

Yeah, so I mean, I teach in a Catholic institution, which means that the students come to this with a lot of guilt, which often is productive, not always, but sometimes it's productive. They also come to this not knowing much. So I'll say in general, the course that I now teach at Villanova, I teach it once a year. I call it Native America and the Question of Genocide. And it asks to look at, I guess, US indigenous relations through three theoretical lenses, the lens of genocide, the lens of settler colonialism, and the lens of indigenous sovereignty. And I kind of try to take them through these lenses hoping that they would be convinced at the end that while it's important that we engage with the question of genocide, and we keep the term in the back of our heads, the more productive way to think about these things is through indigenous sovereignty. We don't want to tell a tragic story that ends in genocide.

([44:52](#)):

So we look at different, I guess the unit on genocide looks at the California mission system boarding scores, the massacre at Wounded Knee, the first Wounded Knee, the unit on settler colonialism looks at things like blood quantum, cultural appropriation, American Indian movement, or I guess the second Wounded Knee. And then I guess I play much more with the section on indigenous sovereignty, because some years I look at Manokaya and the Klamath River and Standing Rock. I mean, there's more things are evolving. So I can this year teach Oak Flat. There's struggles, new struggles all the time. So the Doctrine of Discovery is there underlying all of these discussions. But what I do is that I bring in someone from the Lenape Nation of Pennsylvania to talk to the students. I mean, some of them are from here, but others are not. And even those who are from here don't know much about what it means to live on Lenape land.

([46:10](#)):

So I bring him in as a guest speaker, and he has them read the actual paper balls, and he tells the story of the colonization of Lenape land starting there. I leave it to him to do the actual unpacking of the Doctrine of Discovery and depends on his schedule and what time of the semester he comes. Maybe he comes after I have mentioned it many times, and maybe they knew a little bit about what it meant, but not deeply. Or maybe one semester he comes very early. And then we have it as the basis of discussion throughout the semester. It does different things in different points of the semester. But honestly, since they know so little, I guess last semester I asked, I guess I assumed that Wounded Knee is something that everyone knows about. So the way that I came to teach about it is already through a meta discourse about how we remember.

([47:16](#)):

And I had them do a project where they divided them into groups, and one group was supposed to be journalists reporting on the massacre, and one group was supposed to be teachers creating a lesson plan to teach children about it. And one group was designing a memorial, and something was a little off there. And then I asked, how many of you knew about it before today? And three of them raised their hand. And I don't know why I'm still shocked every time, I mean, I have this spiel that with every class I do, I didn't grow up here. I didn't go to high school here. I don't know what you learned. I don't know what you know. So please tell me before we even start. And they always say, we had a couple days in AP history, AP politics, government, whatever it is, a couple days of four years of high school that they talked about indigenous related things.

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Sandy Bigtree ([48:14](#)):

wow.

Dana Lloyd ([48:14](#)):

And yet I expect that they would know what Wounded Knee means. So when this is the landscape, it doesn't really matter. When we talk about the doctrine of discovery, it can be at the end.

Sandy Bigtree ([48:25](#)):

Yes.

Dana Lloyd ([48:26](#)):

Yeah. I think there's growing interest and willingness from the institution to do things. At Villanova, we have very few indigenous undergraduate students, but they are now starting a club, a Native American indigenous student club. There's more partnership with the Lenape Nation of Pennsylvania, some obsession with land acknowledgement, but being willing to be pushed to do more to provide scholarships for local indigenous students and things like that. And I'm really hoping that we are on the way to start a indigenous studies program. I don't know.

Philip P. Arnold ([49:07](#)):

You are in the land of William Penn.

Dana Lloyd ([49:09](#)):

Yes.

Sandy Bigtree ([49:11](#)):

Yes. Thank you. I'm going to now move into something a little more difficult to talk about. You're in a very difficult position being an attorney and dealing with Native attorneys in this country. Because we live in Onondaga territory, we have more insight in many regards to Indian law, federal Indian law. I'm really happy. Peter d'Errico finally came out with a book and called it what it really is, anti-Federal Indian Law. Being here among the Haudenosaunee, they do not have a BIA government. They do not have a native attorney representing them, because once you take the oath to be a recognized United States attorney, you are giving your allegiance to the United States. And in Haudenosaunee territory, allegiance is sovereign to the Haudenosaunee. So definitely that divide is right present in all of our work and what we do.

([50:14](#)):

BIA governments all over the country are not the traditional people in any of those territories. They're all people the United States recognizes who follow the Constitution the United States laid out for them to create. It goes against their tradition and how they organize themselves prior first contact. So it's very complicated when you enter into this kind of work, whether it be law or religion or anything else, because colonialism has permeated everything. Christianity has permeated everything and divided everything. So I respect the work that you're doing and it's really exciting.

Philip P. Arnold ([51:05](#)):

It's very difficult.

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Sandy Bigtree ([51:05](#)):

But it is incredibly difficult because you're not representing the traditional people in these territories. You're representing the BIA governments that are pretty much puppet regimes of the United States. Those leaders are not representatives per se.

Philip P. Arnold ([51:28](#)):

Not directly.

Sandy Bigtree ([51:29](#)):

Not directly. So it's a very complicated area in getting involved in any of this. Even at Standing Rock, those people demonstrating in Standing Rock were not necessarily backed by their tribal leaders that the United States represents because they're at odds, probably supportive of those pipelines where the traditional people and the youth were speaking out to keep those pipelines out of their territories. So it's difficult. I commend you for staying in this work, because you're finding out how very complicated it all is, because colonialism is everywhere.

Dana Lloyd ([52:09](#)):

Yeah. What Frank Willerson said about racism in America, or anti-blackness, right? It's like making gazpacho soup without tomatoes. Take the anti-blackness out of America there's no America. You can say the same about settler colonialism, right? Talking to Yurok leadership, there's disagreement between the people who ended up organizing according to the US requirements, in modeling government on European models of government, and people who say... Which means that they can get money out of the US government. And there's a lot, it enables a lot of good work to be done, for sure. Versus people who say, "I don't want anything to do with the US government, and I would give up all this money and all these benefits because I don't trust them." I see them somehow managing to still live together and work together and respect each other and love each other, even if different.

Philip P. Arnold ([53:17](#)):

Oftentimes they're in the same families.

Dana Lloyd ([53:19](#)):

Exactly, right, yeah, absolutely. Yeah, yeah.

Sandy Bigtree ([53:22](#)):

But it's not okay. It's difficult, painful.

Dana Lloyd ([53:25](#)):

Right. So yeah, I'm saying I see this happening outside of Haudenosaunee manages to remain much more sovereign, independent, whatever words you want to use for that. But even nations that have not taken this route see these conflicts or tensions, right?

Sandy Bigtree ([53:49](#)):

Right.

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Philip P. Arnold ([53:50](#)):

Oh yeah. The history of California nations is brutal, just brutal. So it's a whole different kind of context. There aren't the same treaties. The whole treaty history in California is very different than out here as well.

Sandy Bigtree ([54:12](#)):

And this really is bringing up the Doctrine of Discovery again, which was to Christianize indigenous people and create those divides within the community. And we're still having to deal with all of that. It goes right back to those doctrines.

Philip P. Arnold ([54:30](#)):

And when Marshall talks about civilizing or civilization, that's a stand in for the Christian nation as well. And that's how the Doctrine of Discovery slips into his decision. So your initial comment about the separation of church and state being a kind of fiction is apt, I think.

Sandy Bigtree ([54:53](#)):

Right on. Yep.

Dana Lloyd ([54:54](#)):

Yeah, yeah. Yeah.

Philip P. Arnold ([55:00](#)):

Well, thanks very much, Dana. This has been a lovely conversation. I think that's a good place to wrap it up. We'll see you soon, and look forward to further conversations.

Dana Lloyd ([55:13](#)):

Yeah, thank you very much for this. It was very productive and enjoyable.

Jordan Brady Loewen-Colon ([55:19](#)):

The producers of this podcast were Adam DJ Brett and Jordan Loewen-Colon. Our intro and outro is Social Dancing music by Oris Edwards and Regis Cook. This podcast is funded in collaboration with the Henry Luce Foundation, Syracuse University, and Hendricks Chapel, and the Indigenous Values Initiative. If you liked this episode, please check out our website and make sure to subscribe.